not in accordance with the ordinary principles of commercial accounting. It is also submitted that the Board was correct in applying the consistency principle enunciated by Lord Reid in the *Duple* case and referred to with approval by Lord Morris of Borth-y-Gest in *B.S.C. Footwear Ltd.* v. *Ridgway*[4] at page 529:

"It was recognised by the Special Commissioners and in the judgments that good reason must be shown before giving endorsement to the action of the Crown in requiring a change of method of accountancy which the company for at least thirty years had adopted and which the Crown had not in that time challenged. Guidance was given as to this by my noble and learned friend Lord Reid in his speech in *Duple Motor Bodies Ltd.* v. *Ostime*. Following that guidance our concern must be to consider whether the method required by the Crown is better calculated than the method hitherto adopted by the company to reveal the full amount of the profits or gains of the company."

Earlier on in his speech Lord Morris at page 528 said:

"For many years the company have kept their accounts upon a particular basis. The Crown with appreciation of it have accepted it. The onus must be upon the Crown to show that the basis is unacceptable and should be changed. As between competing methods and practices of commercial accounting a mere preference for one should not give it, priority if the others are not open to objection. What must in the present case be considered is whether the basis which the company adopted was or was not a basis which would show 'the full amount of the profits or gains' of a particular year: see section 127 of the Income Tax Act, 1952."

The passage of Lord Reid's speech referred to reads as follows:

"It appears to me that we must begin at the other end and simply ask what, in all the circumstances of a particular business, is a figure which fairly represents the cost of stock-in-trade and work in progress. One thing clearly emerges as approved by the accountancy profession — whatever method is followed, it must be applied consistently. I accept that. So the real question is, what method best fits the circumstances of a particular business. And if a method has been applied consistently in the past, then it seems to follow that it should not be changed unless there is good reason for the change sufficient to outweigh any difficulties in the transitional year. There might, perhaps, be good reason for a change in a particular case in the other direction. But I can find nothing in the Case to justify such a change in the present case."

The Board found no good reason for the change in the treatment of the property tax for the accounting year 1974 and that on the accountancy evidence the company had failed to discharge the onus on them to show that the treatment of the property tax in the accounts for the earlier years was wrong in law and in fact. Those findings were accepted by the High Court and we have not been persuaded on the undisputed facts and on the accountancy evidence before the Board that the decision of the Board in dismissing the appeal of the company against the assessment was wrong. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Lee & Lee.*

MING TEIK CO. PTE. LTD. v. KIAN CHEONG (BOXES) MFG. CO. PTE. LTD.

[O.C.J. (Kulasekaram J.) January 27, 1982]
[Singapore — Originating Summons No. 404 of 1981]

Land Law — Sale and Purchase Agreement — Time of the essence of Agreement — 30 days' notice for payment — Cheque drawn before but received after expiry date — Effect of.

By 3 identical agreements dated November 10, 1980, the respondents purchased from the applicant 3 properties. By virtue of the said agreements, on October 27, 1981 they lodged three Caveats against the properties.

Each of the three agreements stipulated, *inter alia*, the following:—

(i) "3(1). The purchase price shall be paid by the purchaser to the vendor by instalment and at the time following that is to say:—

(b) within fourteen (14) days after receipt by the purchaser of the vendor's notice in writing that the foundation work has been completed, a sum equal to ten (10) per cent of the purchase price;

(ii) "4. Time shall be of the essence of the contract in relation to all provisions of this Agreement and Shall relate to the payment of any instalment of the purchase price or any part thereof;

(iii) "5(3). If any of such unpaid instalments and interest remains unpaid for any period in excess of forty (40) days after its due date the vendor shall be entitled at its option on giving to the purchaser or his solicitors not less than thirty (30) days notice in writing to treat this agreement as having been repudiated by the purchaser and (unless in the meanwhile such unpaid instalment and interest shall have been paid) this agreement shall at the expiration of the said notice (and in this respect time shall be of the essence) be annulled. . . ."

On March 16, 1981, the applicants gave to the respondents notices under clause 3(b) of the agreements for payment of $32,518 due to each property. On May 15, 1981, the applicants gave and the respondents received notices under clause 5(3) of the agreement:

"We refer to our letter of March 16, 1981.

We are instructed to and we do hereby give your clients notice to pay the outstanding sum of $32,518 being the instalment under clause 3(1)(b) of the agreement plus interest within thirty (30) days from the date of receipt hereof, failing which our clients will exercise their rights under clause 5(3) of the agreement and treat the same as having been repudiated by your clients."

The respondents had drawn a cheque on June 12, 1981 for the required amount payable to the Tat Lee Bank and posted the cheque with a covering letter to the respondents' solicitors for transmission to the applicants' solicitors. The said letter was received by the respondents' solicitors on June 16, 1981. On the same day too they sent it to the applicants' solicitors who returned it as it was not received before the expiry of the notice in question.

The applicants contended that the agreement had been repudiated and sought to have the said caveats removed.

Held, allowing the application: as there was non-compliance with the notice by the respondents, the applicants were entitled, at the expiry of the notice, to treat the agreement as repudiated by the respondents.

Cases referred to:-

(1) *Rightside Properties Ltd.* v. *Gray* [1974] 2 All E.R. 1169.

(2) *Norman* v. *Rickitts* (1886) 3 T.L.R. 182.

ORIGINATING SUMMONS.

Cheng Tim Pin for the applicants.

L.A.J. Smith for the respondents.

Kulasekaram J. (delivering oral judgment): Most of the facts are agreed between the parties and are not seriously in dispute here. There are only two issues to be decided. On the facts as set out here, first, was the notice here, a valid notice and in conformity with the provisions of clause 5(3) of the agreement. Under that clause the respondents should be given not less than 30 days' notice in writing to pay the unpaid instalments and interest, and if at the expiration of the said notice, the unpaid instalments and interest or any part thereof remain unpaid, then the applicants at their option may treat the respondents as having repudiated the agreement and have the agreement annulled. That is what is provided under clause 5(3) and thereafter certain consequences follow, sets out what their rights are under the terms of the agreement — that they can deal with the property as the applicants deem fit and whatever money has been paid them, how they are to be disposed of, and saying very clearly, that ends the matter — no question of going back for damages — all that has been spelled out there.

The notice that was given under clause 5(3) — there are three notices one of which is relevant here — the one we are dealing with is at AB95 dated May 15, 1981 which says "We are instructed to and we do hereby give your clients notice to pay the outstanding sum being the instalment under clause 3(1)(b) of the agreement plus interest within 30 days from the date of receipt hereof, failing which our clients will exercise their rights under clause 5(3) of the agreement. . . ." The material words in the notice are "within 30 days from the date of receipt hereof". They were asked to pay up within 30 days from the date of receipt of that notice.

Mr. Smith contends that this is a bad notice and is invalid and ineffective and he relies on mainly the the case of *Rightside Properties Ltd.* v. *Gray.*[1] To my mind this case can be distinguished from our case. In that case the facts are different. The party in question had to be given not less than 21 days notice requiring them to do an act. At the expiry of the notice if the act remains not done then certain consequences follow as provided under the terms and conditions of the agreement. There the notice was "not less than 21 days" and in our case it is 30 days but that is not material. The point is this: the party who had to give notice there posted the letter on June 23 and dated the letter June 23 requiring the act to be done and these are the material words in that notice "within 21 days from date hereof" i.e. they are giving "21 days from date hereof". In all these cases whether it is "from date hereof" or "from date of receipt hereof" that day is excluded. So when you use the expression "within 21 days from date hereof", in this case the June 23, so excluding the date 23rd you start counting from June 24, 21 days, that is the period of the notice. So the period commences from June 24 and you count 21 days. That is the period that is given. That is, a fixed certain period, that is the period of the notice. But the notice was posted and because it was posted when it was received, giving the best interpretation possible assume on the next day the letter was received i.e. the 24th. So for the person who receives that notice on June 24, for purposes of computing the period of notice he has had, you have to exclude June 24, and start counting the period of 21 days commencing from June 25. But the notice on the face of it takes the June 24 into consideration because the wording of the notice was "within 21 days from date hereof", that is, it fixes the beginning of the period as June 24. That is how the one day became short there and the judge ruled, on the face of the notice that that notice was bad because it had not been given the requisite 21 days. In our case the wording of the notice is different. In our case the requirement is that the applicants have to give 30 days notice. That is the act has to be done within 30 days. Not less than 30 days notice has to be given and the notice that was given was in these words, to the effect that "within 30 days from *receipt hereof*", not "*from date of the letter*". On the facts, the notice was received on May 15. There is no dispute about that. So the period commences without any ambiguity at all, on May 16 and there is no room for any sort of argument about it. The period commences on May 16. Count 30 days commencing on May 16 and 30th day is June 14. The notice expires at the end of June 14. The act has to be done within that time. If you don't do the act within the time you have not complied with the notice. Then it is a question of whether the applicants are prepared to waive the non-compliance and accept performance or not. But if they say no it is within their right. At the end of June 14 the notice has expired. From then onwards you can treat whatever happens, that the respondents have repudiated the contract — the agreement has been repudiated. That being so I find as far as that point was concerned the notice was a good notice and in full conformity with the requirements of section 5(3) and it had expired on June 14. By that time there was non-compliance by the respondents.

Mr. Smith raised a second point. They had complied with the notice and the applicants were therefore not entitled to treat the respondents at the expiry of the notice as having repudiated the agreement because they had complied with the requirements and paid the money. What Mr. Smith said was they had complied with the notice, made the payment and they rely on their having drawn a cheque on June 12, 1981 for the required amount payable to the Tat Lee Bank as required by the applicants in their earlier notice and posted the cheque with a covering letter, I take it, to their solicitors on the same day for transmission to the applicants' solicitors. This letter was received by the respondents' solicitors on June 16 and immediately on the same day they sent it to the applicants' solicitors who returned it as it was not received before the expiry of the notice in question. The applicants' solicitors returned it because the notice had expired and the cheque was received thereafter. Mr. Smith suggested that here on June 12, 1981 when the respondents drew the cheque and posted it to their solicitors for transmission to the applicants' solicitors, having regard to the conduct of the parties and the circumstances here, that payment on the 12th was payment within time and therefore they had complied with the notice. That is his submission. In other words they had com-

plied with the notice in that they had performed the act on June 12, 1981. He relies amongst other cases mainly on *Norman* v. *Rickitts.*[2] The circumstances in that case are very different. I cannot accept in the circumstances here that what the respondents did on June 12, 1981 amounted to payment to the applicants.

The course of dealings was that the respondents' solicitors sent a letter by hand and such a letter containing the cheque was not received by the applicants' solicitors before the expiry of the notice. So there was non-compliance with the notice by the respondents here and the applicants were entitled, at the expiry of the notice, to treat that the agreement had been repudiated by the respondents and proceed to treat the agreement as annulled and act as provided in the clause.

On both these points I am against the respondents. That being so the applicants must succeed in this application to have the caveats removed.

Costs in the cause.

Application allowed.

Solicitors: *Yap & Yap; L.A.J. Smith.*

ONG CHONG SOO v. TAN ENG TAI & ANOR.

[O.C.J. (Sinnathuray J.) February 24, 1982]
[Singapore — Suit No. 675 of 1980]

Land Law — Sale and purchase agreement — Correspondence between parties — Whether there was a contract concluded.

Contract — Sale and purchase of land — Correspondence — Whether there was concluded contract between parties.

The issue before the court was whether on the proper construction of certain letters exchanged between the solicitors for the parties, there was a contract of sale concluded between the plaintiff as the intending purchaser and the defendants as owners of No. 17 Lakme Street for the purchase of the premises at $177,000.

Held, dismissing the plaintiff's claim: (1) the sale and purchase was subject to contract and there was nothing in the exchange of letters between the parties from which it can be said or inferred that there was a change in the intention of either of the parties to create binding legal relations between themselves in any other way;

(2) the exchange of letters between the solicitors was with regard to the negotiations relating to the making of an Agreement for Sale and Purchase which was to be the contract between the parties.

Cases referred to:-

(1) *Griffiths* v. *Young* [1970] 3 All E.R. 601.

(2) *Yeo Long Seng* v. *Lucky Park (Pte.) Ltd.* [1971] 1 M.L.J. 20.

[Editorial Note: See *Quek Choon Huat* v. *R.M. Seow & Anor.* [1981] 2 M.L.J. 3.]

CIVIL SUIT.

Andrew Ee for the plaintiff.

Sim Teow Geok for the defendants.

Sinnathuray J.: In this case the issue formulated by counsel for the plaintiff is whether on the proper construction of certain letters exchanged between the solicitors for the parties, there was a contract of sale concluded between the plaintiff as the intending purchaser and the defendants as the owners of No. 17 Lakme Street for the purchase of the premises at the price of $177,000. The relevant letters are these.

On November 19, 1979 Messrs. Kao & Johns, solicitors for the plaintiff, wrote to the defendants' solicitors, Messrs. Sim Teow Gok & Co. as follows:

"We are instructed by our client that he has agreed subject to contract to purchase [No. 17 Lakme Street] from your client at the price of $177,000 with vacant possession on completion. If you are similarly instructed please let us have the title deeds on loan on the usual undertaking... and the draft contract for our approval."

On December 6, 1979 the defendants' solicitors sent the Agreement for Sale and Purchase in duplicate to the plaintiff's solicitors for their approval with the request that they be treated as faired copies if the solicitors found them in order.

On December 22, 1979 the plaintiff's solicitors returned to the defendants' solicitors the Agreement for Sale and Purchase in duplicate duly signed by the plaintiff together with the cheque for the sum of $17,700 as deposit. In the letter the plaintiff's solicitors requested for the return of a copy of the Agreement duly signed by the defendants. Equally material is paragraph two of the letter which reads as follows:

"Please note that we have made the following amendments and insertions to your agreement:—

(a) We have provided in Clause 1 that the deposit is to be paid to you as stakeholders. This is in view of the fact the property is still under mortgage at the moment and also because of special condition (A) hereinafter referred to.

(b) We have inserted the words 'Subject to Special Condition A' in Clause 4.

(c) We have made the following amendments to Clause 7:—

(i) We have inserted at the beginning the words 'Subject to Special Condition A'.

(ii) We have inserted a proviso to provide that your clients will be responsible for any increase in property tax for the period before completion even though notice is served on or after the date of completion.

(d) We have inserted the date of completion as March 20, 1980 with an option on our client's part to complete earlier. We trust that this is acceptable to your clients.

(e) We have inserted Special Condition A in view of the fact that we have not yet received back our requisitions to the usual Government and other departments. We trust your clients will agree to this."

On January 18, 1980 the defendants' solicitors replied to the plaintiff's solicitors as follows:

"We refer to your letter of the [22nd] ultimo and are informed by our clients that they are only prepared to allow your client up to the end of February 1980 to finalise the purchase herein.

Please obtain your client's instructions before we forward to you a signed copy of the Agreement with the date of completion duly amended."

The only other letter I need refer to is the letter from the plaintiff's solicitors dated January 29, 1980, the relevant part of which is as follows:

"...we are instructed by our clients that they are agreeable to completion taking place on February 28, 1980.

Kindly return one copy of the Agreement duly signed as soon as possible."

The plaintiff's case is that, though in the letter